

May 11, 2022

Senate Majority Leader Andrea Stewart-Cousins
Legislative Office Building Room 907
Albany, NY 12247

Senator Julia Salazar
Chair, Senate Committee on Crime Victims,
Crime and Correction
State Capitol Building Room 514
Albany, NY 12247

Speaker of the Assembly Carl Heastie
Legislative Office Building Room 932
Albany, NY 12248

Assembly Member Jeffrey Dinowitz
Chair, Assembly Standing Committee on Codes
Legislative Office Building 632
Albany, NY 12248

Re: Support the Gender Identity Respect, Dignity, and Safety Act (A.7001-B/S.6677-A)

Dear Majority Leader Stewart-Cousins, Speaker Heastie, Senator Salazar, and Assembly Member Dinowitz:

We represent numerous LGBTQ+ groups and allied organizations in New York State and write to express our strong support for the Gender Identity Respect, Dignity, and Safety Act (A.7001-B/S.6677-A) (GIRDS). This law is urgently needed to protect transgender, non-conforming, non-binary and intersex (TGNCNBI) people who are incarcerated in New York's prisons and jails. We ask that you make every effort to pass this bill this session.

New York has always prided itself on being a safe and welcoming place for the TGNCNBI community, but it has not done enough for our community members experiencing incarceration. Most incarcerated transgender women continue to be housed in men's prisons and jails and incarcerated TGNCNBI people, regardless of where they are housed, are subjected to daily misgendering, abuse, and other inhumane treatment. Sylvia Rivera Law Project and TakeRoot Justice recently conducted a survey of TGNCNBI people incarcerated in New York State prisons and found that *all* women-identified TGNC respondents, the majority of whom were people of color, were housed in men's prisons.¹ Two-thirds of TGNC respondents requested transfers to gender-

¹ Sylvia Rivera Law Project & TakeRoot Justice, *It's Still War in Here: A Statewide Report on the Trans, Gender Non-Conforming, Intersex (TGNCI) Experience in New York Prisons and the Fight for Trans Liberation, Self-Determination, and Freedom* 17 (2021), available at <https://takerootjustice.org/wp-content/uploads/2021/06/Its-Still-War-In-Here-1.pdf>.

aligned housing due to safety issues and most were denied, often with cruel and inhumane language.² 75% of TGNC respondents experienced sexual violence by correctional officers.³ 95% of TGNC respondents reported being verbally harassed and called derogatory names by corrections staff.⁴ In the NYC Department of Correction (DOC), sixteen transgender women were housed in men's jails as of January 21. The impact of misaligned housing and constant misgendering and harassment on people's health, safety, and well-being is devastating. As described by one person,

For too many years, I had suffered years of abuse and indignities while housed with men in jails and prisons. Officers would often call me "it." Or, for example, when I was housed in a dorm with almost 50 men in Rikers Island in the summer of 2017, I was repeatedly verbally and physically harassed. I never felt safe; it was almost impossible to sleep. At no other time in my life have I experienced the deep hurt and pain I felt while housed with men in jails and prisons.

We urge you to read the experiences of other people subjected to these harmful practices, attached to this letter.

To finally help end this violence, fear, and inhumane treatment, New York must enact GIRDS. The bill creates a presumption of housing consistent with one's gender identity unless the person opts out of such placement or if there is *clear and convincing* evidence that a person presents a current danger of committing gender-based violence. Corrections officials will be prohibited from using discriminatory reasons to deny appropriate housing, such as a person's genital status or sexual orientation. In addition to the housing provisions, GIRDS includes the following important protections:

- Due Process Protections. Currently, in the state prison system, people wait for months and sometimes years for a written response to requests for gender-aligned housing and those responses provide little to no reasoning justifying a denial. GIRDS requires a written determination in two days with a detailed explanation for the decision. This will enable people who are denied to challenge wrongful or discriminatory denials.

² *Id.* at 18-21.

³ *Id.* at 27.

⁴ *Id.* at 24-25.

- Requires Affirming Treatment, Including Access to Affirming Items and Programming. GIRDS requires that TGNCNBI people are referred to by their names and pronouns and have access to gender-affirming commissary, programming, and medical care. It also provides a right to be searched by an officer or staff member most closely associated with their gender identity unless the person requests otherwise or there are exigent circumstances.
- Reporting and Training Obligations. GIRDS provides for annual training and reporting on compliance with the bill's provisions to ensure correctional agencies are held accountable.
- Intersex Inclusion. The GIRDS coalition includes intersex advocates who ensured the bill is inclusive of the needs of the intersex community and responsive to the specific discrimination they face in prisons and jails.
- Prohibits Transfer as a Form of Discipline. In NYC DOC, TGNCNBI people have been transferred from women's housing to men's housing as a form of discipline. To end this cruel and inhumane practice, GIRDS prohibits denying placement based on gender identity or transferring someone out of gender-aligned housing as a form of discipline. It would be unthinkable for a prison or jail to transfer a cisgender person out of gender-aligned housing as a form of discipline.
- Limits Involuntary Protective Custody. Many TGNCNBI people are placed in involuntary protective custody when they report an assault or other threat to their safety.⁵ Involuntary protective custody is solitary confinement, a form of torture.⁶ For these reasons, GIRDS limits the use of involuntary protective custody to 14 days.

The protections provided by GIRDS are consistent with other jurisdictions, including in the tri-state area. In New York, Steuben County, as the result of a lawsuit brought by a transgender woman, adopted a policy that prohibits denial of gender-aligned housing on the basis of discriminatory reasons, including "(i) the anatomy or genitalia of the person whose housing

⁵ *Id.* at 27-29.

⁶ United Nations Standard Minimum Rules for the Treatment of Prisoners, Rules 44-45 (2015).

placement is at issue, (ii) the sexual orientation of the person whose housing placement is at issue, (iii) the complaints of cisgender people who do not wish to be housed with a non-cisgender person due to that person's gender identity, or (iv) a factor present among the other people in the requested housing unit."⁷ Notably, the New York State Sheriffs' Association signed off on the Steuben County policy.⁸ Pursuant to a settlement, New Jersey recently adopted a policy whereby TGNCNBI people are presumptively housed according to their gender identity.⁹ In September 2020, California enacted a law that permits TGNCNBI people to assess where they will be safest and choose where they would like to be housed.¹⁰ New York should follow the lead of these and other¹¹ jurisdictions and enact the Gender Identity Respect, Dignity, and Safety Act.

We urge you to co-sponsor GIRDS and ensure that it move expeditiously through the relevant committees and to final passage.

Sincerely,

Adirondack North Country Gender Alliance
 Albany Damien Center
 Center for Community Alternatives
 College & Community Fellowship
 Correctional Association of New York
 Decriminalize Sex Work
 Drug Policy Alliance
 Empire Justice Center
 Envision Freedom Fund
 Equality NY
 Exponents
 Free the People WNY
 Gender Equality New York, Inc.
 #HALTsolitary Campaign

⁷ https://www.nyclu.org/sites/default/files/field_documents/2020-07-22_faith_final_settlement_agreement_redacted.pdf.

⁸ See Press Release, New York Civil Liberties Union, Agreement Follows Lawsuit on Behalf of Woman Subjected to Harassment and Discrimination in Steuben County, N.Y. Jail (Aug. 5, 2020), *available at* <https://www.nyclu.org/en/press-releases/landmark-settlement-yields-one-nations-strongest-jail-policies-protecting-transgender>.

⁹ N.J. Department of Corrections Internal Management Procedure, PCS.001.TGI01 at 3 (2021), *available at* https://www.aclu-nj.org/files/6516/3000/3727/2021.08.26_ACLIU-NJ_GSE_Letter_to_Passaic_County.pdf.

¹⁰ Cal. Penal Code §§ 2605-06.

¹¹ *E.g.* Conn. Gen. Stat. § 18-81ii; M.G.L.A. ch.127 § 32A.

Hour Children
Innocence Project
Jim Owles Liberal Democratic Club
Lambda Legal
Legal Action Center
Long Island Social Justice Action Network (LISJAN)
Make the Road New York
New Hour for Women & Children – LI
New Pride Agenda
New York Civil Liberties Union
New York Communities for Change
New York County Defender Services
Osborne Association
Partnership for the Public Good
Phyllis B. Frank Pride Center of Rockland County
Princess Janae Place
Release Aging People in Prison (RAPP) Campaign
Small Town Pride – Malone NY
Sylvia Rivera Law Project
The Bronx Defenders
The Legal Aid Society
The LGBT Bar Association of Greater New York (LeGal)
The Lesbian, Gay, Bisexual & Transgender Community Center
Transgender Legal Defense and Education Fund
VOCAL-NY
Women’s Prison Association
Youth Represent

CC. Members of the Senate and Assembly

Experiences of TGNCNB People in New York prisons and jails¹

Experiences of Ms. A: Ms. A has been in DOCCS custody for over twenty years, always in a men's prison. During that time, DOCCS has delayed and at times denied access to gender-affirming care and failed to protect her from repeated instances of sexual abuse and harassment. Around 2014, Ms. A started asking for hormone therapy; it took more than a year and repeated requests for DOCCS to send her for an evaluation and even longer to provide her with treatment. Ms. A asked for gender-affirming surgery, but after more than a year, she still has not received it.

Ms. A has a long history of sexual abuse and victimization during her incarceration, including a gang rape by other persons in custody. She tells us she requested housing in a women's prison in accordance with the DOCCS policy but her request was denied with no reason given. Although DOCCS has placed her in a number of purportedly "trans-friendly" prisons, she has continued to experience serious abuse, including abusive searches, too frequently conducted by male officers, who have grabbed her breasts or genitals and made derogatory comments. Other prisoners have "hit on her," exposed themselves to her, and have touched her without her consent. When she has resisted their advances, her property has been taken and she has been assaulted. While her situation has at times improved when she has been transferred to prisons where there are with a number of other transgender women, this improvement has often been short-lived as other women are transferred, released, or even die by suicide.

In other words, Ms. A has faced continuing abuse as a result of her gender identity and the refusal of DOCCS to house her safely.

Experiences of Ms. B: Ms. B was released from DOCCS in the summer of 2019. She is in her fifties and is a woman. This incarceration was her first. When she was arrested in summer 2017, she had government issued identification that identified her as female. She was first taken to intake in the NYC Department of Correction (DOC) in the women's jail where she was kept isolated from others for approximately three days. When she revealed to a doctor that she was a transgender woman and needed female hormone medications, she was forced to move to a male facility. She was terrified and dumbfounded; she did not understand why she could not remain in the women's jail, particularly since the government had acknowledged her gender identity as female. She was moved to the Transgender Housing Unit (THU), which although located in a men's jail, felt safer than being housed with men in a general population unit. When the THU was moved to the women's jail, ironically she felt less safe because the THU then offered only dormitory housing. She could not retreat to a safe space if there were fights or if officers, as too frequently occurred, used pepper spray, aggravating her asthma and making it extremely difficult for her to breathe. She therefore asked to be moved to individual cell housing with solid doors. Instead, she was moved to a cell with bars in a men's jail where she experienced two horrific attempted sexual assaults, including one involving an incarcerated man pulling her hair through the bars of her cell to force his penis into her mouth. Only then was she moved to cell housing with a solid door in a different male jail, but even there she was subject to unrelenting sexual harassment.

¹ These client experiences are also included in The Legal Aid Society's Memorandum of Support for the Gender Identity Respect, Dignity, and Safety Act. The clients have chosen to share their experiences anonymously.

When she was sentenced to DOCCS she was put in general population at reception, despite our notifying DOCCS of her serious risk in custody. She tells us this period in population was the most frightening experience of her life, with other people in custody masturbating in front of her and demanding sexual favors. Officers varied from indifferent to hostile, saying things like “are you trying to make yourself pretty?” when she pulled her hair back in an effort to comply with their rules. She was then placed in protective custody.

After our intervention, she was moved to a “trans-friendly” prison where she told us she was safe while she remained on the unit, and where she was housed with other transgender women, some gay men, and some older persons. However, she also told us that she was terrified to leave the unit for medical care or programs or for any other reason, because of the substantial risk she faced from the men at the prison who would continually harass her. She also told us that officers would on occasion harass her due to her gender identity, telling her to take a certain route that was in fact not allowed or asking her if she performed massages. During her incarceration in DOCCS she was not provided with a bra that fit or with any female underpants. When she needed an evaluation for her hormone treatment, she was sent in handcuffs attached to a waist chain and ankle shackles for an appointment that lasted two minutes, even though the onerous and humiliating process took all day involving transport on a bus without seatbelts. Although there was a bathroom stop on the trip, the restraints were not loosened or removed so that she could use the bathroom. She was informed that if she refused the trip, she would receive a disciplinary infraction.

DOCCS and the Institutional Parole Officer had no idea how to help her find housing for women upon her release, because to their understanding they only worked with men since it was a men’s prison. As a result, she was released to a men’s shelter. Thankfully, she was able to find transitional housing for women immediately because of the efforts of advocates, but not because of any steps taken by DOCCS or the Division of Parole.

Experiences of Ms. C: Ms. C was housed in a women’s jail at Rikers Island from the summer of 2018 until spring 2020, and then in both a men’s prison and a women’s prison in NYS DOCCS custody until her release in early 2021. From virtually the moment she arrived in custody, she asked both NYC DOC and NYS DOCCS for gender affirming surgeries. Neither provided it. NYC DOC told us for months that they were trying to arrange it, but during this time she was never even referred for an evaluation. While in NYS DOCCS, because Ms. C suffered from a bilateral testicular cyst, she was provided with a bilateral orchiectomy, but DOCCS refused to provide her with the additional requested treatment, a vaginoplasty, even though she had spoken with her surgeon about it and he expressed willingness to perform the procedure.

Although Ms. C was housed in a women's jail safely in NYC DOC custody, when she was released on her own recognizance because of the risks facing her due to the pandemic, a warrant fell and DOCCS took custody of her. Instead of housing her in a women's prison, she was taken to Sing Sing, where she faced harassment and abuse. Only after our advocacy was she moved to a women's prison in DOCCS.

Experiences of Ms. D: Ms. D is a 62-year-old transgender woman who was just released from DOCCS custody at the end of 2020. Ms. D has lived as a woman for more than 40 years, since

she moved to the United States. Despite spending much of her life in custody, she has never been convicted or disciplined for any act of violence; she has been sentenced to prison for what amounts to repeated shoplifting charges. She was housed in men's prisons and jails for years, where she was harassed and threatened: objects were thrown at her, transphobic comments made, and attempts were made to touch her including while she showered. She lived in constant fear.

Following Legal Aid's demand, the NYC DOC housed her in its THU, first when it was located in one of the city's jails for men. It was not until the THU was moved to the women's jail that she felt safe, could fully program, and could obtain the basic necessities that she needed. Following our demand to NYS DOCCS that she be housed safely and respectfully, she was housed in a women's prison where she studied cosmetology, took business classes, and completed ASAT (Alcohol and Substance Abuse courses). She stayed calm, including during the pandemic, by knitting in her cell. She showered separately and met no hostility from staff or other incarcerated individuals (except for one time when a female officer refused to search her saying she didn't feel "comfortable" around transgender people).

In the fall of 2020, Ms. D was released from DOCCS custody. She is now living in her own apartment, is pursuing vocational training, and is successfully transitioning to her life in the community. As she now describes her experiences:

Being acknowledged by DOCCS as a woman, after years of having this denied, has meant the world to me. It helped immeasurably with my gaining the strength and self-respect I needed to transition to the community.

For too many years, I had suffered years of abuse and indignities while housed with men in jails and prisons. Officers would often call me "it." Or, for example, when I was housed in a dorm with almost 50 men in Rikers Island in the summer of 2017, I was repeatedly verbally and physically harassed. I never felt safe; it was almost impossible to sleep. At no other time in my life have I experienced the deep hurt and pain I felt while housed with men in jail and prison.

Because of advocacy by LAS I was finally housed with women, both in NYC DOC and NY DOCCS custody.

When I arrived in Bedford Hills in [] 2019, I was told by DOCCS that I was the only transgender woman housed in a women's prison. When I was released [at the end of] 2020, I was still one of only a handful of people housed by DOCCS consistent with their gender identity. Yet throughout--other than a small number of staff who initially did not want to search me--I was treated with respect and dignity by everyone I dealt with, including all other staff and other incarcerated people.

I was the exception; it is time that housing people in all jails and prisons consistently with their lived experience and gender identity becomes the norm. I pray to God no other transgender woman ever has to go through what I have experienced.